



## **MINUTES**

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE  
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)  
SPECIAL MEETING  
9:00 a.m., Thursday, May 10, 2012  
Police and Fire Department Headquarters—Arizona Room  
8401 E. Indian School Road  
Scottsdale, Arizona 85251**

**PRESENT:** Jack Cross, Chairman/Mayoral Designee  
James Butera, Elected Member  
Velicia McMillan, Citizen Member/Merit Head  
Jeffrey Walther, Elected Member

**ABSENT:** Jeffrey Burg, Citizen Member

**STAFF:** Colleen Barraza  
Chanda Washington

**OTHERS:** Mike Anthony, Esq.  
Hannah Auckland, Esq.  
Police Officer James H. Powers  
Julianne Powers

### **Call to order**

Chairman Cross called the meeting to order at 9:14 a.m. He stated that the first order of business was the acknowledgement of Board Member Burg's excused absence.

### **Roll call**

A formal roll call confirmed the members present as stated above.

### **Possible Executive Session**

Executive Session may occur at any time during this meeting.

**1. Review and approval of meeting minutes—April 19, 2012**

**BOARD MEMBER WALTHER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE APRIL 19, 2012 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**2. Discussion and vote on the Ordinary Disability Retirement application of Police Officer James H. Powers**

Ms. Washington reported that Police Officer James H. Powers was presenting his Ordinary Disability Retirement Application to the Board during today's meeting. She summarized that the Board notebooks contain the application being considered, the approved January 25, 2012 minutes reflecting the Board's denial of Police Officer James H. Powers' Accidental Disability Retirement Application along with the two IME reports associated with that application.

Ms. Washington elaborated that there was also an email from Joel Friedman, Esq. providing additional information from the Applicant's neurologist stating that he was considered to be totally and permanently disabled from July 2011 through March 2007. However, she noted that the latter date is a typo in Mr. Friedman's letter and confirmed that "through March 2007" should be corrected to state "through March 2012," as reflected in the doctor's supporting documentation.

In response to Chairman Cross' inquiry regarding whether the Applicant has any objection to all four Board members hearing his case today, Police Officer Powers stated that it was okay with him if everyone participated in the proceeding.

Chairman Cross announced that the Board needs to adjourn into Executive Session to discuss some technical legal matters before proceeding with this discussion.

**CLOSED PUBLIC HEARING**

**Motion to recess into executive session for discussion of Ordinary Disability Retirement application of Police Officer James H. Powers**

**BOARD MEMBER BUTERA MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF POLICE OFFICER JAMES POWERS' ORDINARY DISABILITY RETIREMENT APPLICATION. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION**

Chairman Cross invited the Board to discuss whether there was a need to send Police Officer Powers for a third IME.

Board Member Walther opined that as discussed during Executive Session there appears to be a conflict between the first two IME reports related to whether there was a pre-existing condition which would impact the direction of the Board's vote. He elaborated that the first IME suggests that Police Officer Powers' condition was not a pre-existing condition and the second IME states that it was a pre-existing condition. In order to be fair to the Applicant and his family there was a need to send him for a third IME to resolve the conflict.

In response to Chairman Cross' inquiry regarding whether the Applicant was willing to go to a third IME, Police Officer Powers responded that he preferred to not go for another IME.

Chairman Cross explained that the Board must resolve the conflicting responses from the first two IME physicians regarding whether the Applicant's injury or illness was the result of a pre-existing condition in order to qualify him for an ordinary disability retirement.

Board Member Walther emphasized the importance of breaking the tie between the prior IME results before voting on Police Officer Powers' application.

In response to Police Officer Powers' inquiry regarding whether the third IME physician would be a cardiologist or neurologist, Chairman Cross responded that staff would locate the appropriate physician for the independent medical examination.

Police Officer Powers explained that a cardiologist would only be interested in his heart and the circulatory system and a neurologist would be more interested in the brain and any damage caused by the stroke.

Chairman Cross confirmed that staff would do their best to locate the most appropriate and experienced physician for the third IME. He recommended that the applicant take someone with him in order to provide assistance in answering all of the physician's questions.

Mr. Anthony explained that once the third IME report was received it would be up to the Board to resolve any conflicts that arise within all of the medical documentation received. He stated that the third IME physician's opinion was not necessarily the tiebreaker, but rather his opinion would assist the Board in deciding whether the Applicant's condition was pre-existing.

In response to Mr. Anthony's inquiry regarding whether the applicant understood his long explanation of the matter, Police Officer Powers stated that he thought he understood the situation.

**BOARD MEMBER BUTERA MOVED TO APPROVE THE ISSUANCE OF A THIRD INDEPENDENT MEDICAL EXAMINATION THROUGH ONE OF THE BOARD'S CONTRACTED MEDICAL PROVIDERS FOR THE APPOINTMENT OF A MEDICAL SPECIALIST TO SERVE AS THE MEDICAL BOARD FOR THE APPLICATION OF POLICE OFFICER JAMES H. POWERS. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG WAS ABSENT.**

**3. Board suggestions for upcoming agenda items**

Chairman Cross confirmed that there were no suggestions for upcoming agenda items.

**ADJOURNMENT:**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 9:48 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec  
PSPRS Police Local Board Secretary

Jack Cross  
PSPRS Chairman/Mayoral Designee